

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS,) Civil Action 04-30126-MAP
)
Plaintiff,) Judge Michael A. Ponsor
)
v.))
)
CARDIAC SCIENCE, INC., et al.,))
)
Defendants.))
)

**DEFENDANT COMPLIENT CORPORATION'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
ON COUNT VIII OF THE AMENDED COMPLAINT**

On June 16, 2006, Plaintiff, Donald C. Hutchins ("Hutchins"), filed a Motion for Summary Judgment on Count VIII of his Amended Complaint (the "Motion"). This Motion should be denied in its entirety. Hutchins already filed this Motion on September 7, 2005. See Docket Entries 87, 88. Defendant, Compliant Corporation opposed the September 7, 2005 Motion for Summary Judgment on September 26, 2005. See Docket Entry 101. For the reasons set forth in Compliant's Memorandum in Opposition to Hutchins' September 7, 2005 Motion for Summary Judgment, which Compliant incorporates by reference herein, Hutchins' Motion should be denied.

In addition, Compliant moved for summary judgment on July 29, 2005. See Docket Entry 66. Hutchins' Motion should also be denied based on the facts, arguments and applicable law set forth in Compliant's Motion for Summary Judgment, which it also incorporates by

reference herein.¹ Compliant respectfully requests that Hutchins' Motions for Summary Judgment be denied in their entirety and that the Court enter summary judgment in Compliant's favor on all claims in this case.

Respectfully submitted,

/s/ Jeffrey J. Lauderdale

WILLIAM E. COUGHLIN (OH #0010874)
COLLEEN M. O'NEIL (OH #0066576)
JEFFREY J. LAUDERDALE (OH #0074859)
CALFEE, HALTER & GRISWOLD LLP
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, Ohio 44114
(216) 622-8200
(216) 241-0816 (facsimile)

JOHN J. EGAN (151680)
EGAN, FLANAGAN & COHEN, P.C.
67 Market Street
P.O. Box 9035
Springfield, Massachusetts 01102-9035
(413) 727-0260
Fax: (413) 737-0121

Attorneys for Compliant Corporation

¹ In his Motion, Hutchins argues that he is entitled to summary judgment on his breach of contract because the License Agreement requires litigation to be filed before the American Arbitration Association. This argument ignores the fact that Compliant is not a party to the License Agreement and, further, by filing this case, Hutchins chose the forum.

CERTIFICATE OF SERVICE

I certify that, on June 30, 2006, I electronically filed, and sent, via first-class U.S. mail, postage prepaid, a copy of the foregoing Defendant Compliant Corporation's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment on Count VIII of the Amended Complaint, upon the following:

Donald C. Hutchins
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
Pro Se

Randall T. Skaar, Esq.
Patterson, Thuente, Skaar, & Christensen, P.A.
4800 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Paul T. Rothschild, Esq.
Bacon & Wilson, P.C.
33 State Street
Springfield, Massachusetts 01103

/s/ Jeffrey J. Lauderdale
One of the Attorneys for Defendant,
Compliant Corporation